

1 allegations in paragraph 122, and therefore deny the same.

2 123. Defendants lack sufficient information and belief to admit or deny the  
3 allegations in paragraph 123, and therefore deny the same.

4 124. Defendants lack sufficient information and belief to admit or deny the  
5 allegations in paragraph 124, and therefore deny the same.

6 125. Defendants lack sufficient information and belief to admit or deny the  
7 allegations in paragraph 125, and therefore deny the same.

8 **Eleventh Cause of Action**

9 *(Equitable Indemnity and Recovery of Attorneys' Fees under CCP 1021.6)*

10 126. Paragraph 126 of Plaintiffs' complaint contains no charging  
11 allegations against Defendants, and Defendants are therefore not required to admit  
12 or deny the allegations.

13 127. Defendants lack sufficient information and belief to admit or deny the  
14 allegations in paragraph 127, and therefore deny the same.

15 128. Defendants lack sufficient information and belief to admit or deny the  
16 allegations in paragraph 128, and therefore deny the same.

17 129. Defendants lack sufficient information and belief to admit or deny the  
18 allegations in paragraph 129, and therefore deny the same.

19 130. Defendants lack sufficient information and belief to admit or deny the  
20 allegations in paragraph 130, and therefore deny the same.

21 131. Defendants lack sufficient information and belief to admit or deny the  
22 allegations in paragraph 131, and therefore deny the same.

23 132. Defendants lack sufficient information and belief to admit or deny the  
24 allegations in paragraph 132, and therefore deny the same.

25 133. Defendants lack sufficient information and belief to admit or deny the  
26 allegations in paragraph 133, and therefore deny the same.

27 134. Defendants deny that Plaintiffs are entitled to equitable indemnity  
28

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1 from Defendants for attorneys' fees. As to the remainder of the allegations in  
2 paragraph 134, Defendants lack sufficient information and belief to admit or deny  
3 these allegations, and therefore deny the same.

4 **Twelfth Cause of Action**

5 *(Negligence)*

6 135. Paragraph 135 of Plaintiffs' complaint contains no charging  
7 allegations against Defendants, and Defendants are therefore not required to admit  
8 or deny the allegations.

9 136. Defendants admit that Technichem had a duty of care. As to the  
10 remainder of the allegations in paragraph 136, Defendants lack sufficient  
11 information and belief to admit or deny these allegations, and therefore deny the  
12 same.

13 137. Defendants deny that they breached their duty of care in connection  
14 with their activities at the Property.

15 138. Defendants lack sufficient information and belief to admit or deny the  
16 allegations in paragraph 138, and therefore deny the same.

17 139. Paragraph 139 of Plaintiffs' complaint contains no charging  
18 allegations against Defendants, and Defendants are therefore not required to admit  
19 or deny the allegations.

20 **Thirteenth Cause of Action**

21 *(Negligence Per Se)*

22 140. Paragraph 140 of Plaintiffs' complaint contains no charging  
23 allegations against Defendants, and Defendants are therefore not required to admit  
24 or deny the allegations.

25 141. Defendants lack sufficient information and belief to admit or deny the  
26 allegations in paragraph 141, and therefore deny the same.

27 142. Defendants lack sufficient information and belief to admit or deny the  
28

1 allegations in paragraph 142, and therefore deny the same.

2 143. Defendants lack sufficient information and belief to admit or deny the  
3 allegations in paragraph 143, and therefore deny the same.

4 144. Defendants lack sufficient information and belief to admit or deny the  
5 allegations in paragraph 144, and therefore deny the same.

6 145. Defendants lack sufficient information and belief to admit or deny the  
7 allegations in paragraph 145, and therefore deny the same.

8 146. Defendants lack sufficient information and belief to admit or deny the  
9 allegations in paragraph 146, and therefore deny the same.

10 147. Paragraph 147 of Plaintiffs' complaint contains no charging  
11 allegations against Defendants, and Defendants are therefore not required to admit  
12 or deny the allegations.

13 **Fourteenth Cause of Action**

14 *(Nuisance)*

15 148. Paragraph 148 of Plaintiffs' complaint contains no charging  
16 allegations against Defendants, and Defendants are therefore not required to admit  
17 or deny the allegations.

18 149. Defendants lack sufficient information and belief to admit or deny the  
19 allegations in paragraph 149, and therefore deny the same.

20 150. Defendants lack sufficient information and belief to admit or deny the  
21 allegations in paragraph 150, and therefore deny the same.

22 151. Defendants lack sufficient information and belief to admit or deny the  
23 allegations in paragraph 150, and therefore deny the same.

24 **Fifteenth Cause of Action**

25 *(Continuing Public Nuisance)*

26 152. Paragraph 148 of Plaintiffs' complaint contains no charging  
27 allegations against Defendants, and Defendants are therefore not required to admit  
28

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1 or deny the allegations.

2 153. Defendants lack sufficient information and belief to admit or deny the  
3 allegations in paragraph 153, and therefore deny the same.

4 154. Defendants lack sufficient information and belief to admit or deny the  
5 allegations in paragraph 154, and therefore deny the same.

6 155. Defendants lack sufficient information and belief to admit or deny the  
7 allegations in paragraph 155, and therefore deny the same.

8 156. Defendants lack sufficient information and belief to admit or deny the  
9 allegations in paragraph 156, and therefore deny the same.

10 157. Defendants lack sufficient information and belief to admit or deny the  
11 allegations in paragraph 157, and therefore deny the same.

12 158. Defendants deny that they have acted with oppression, fraud or  
13 malice, and in wanton disregard of the health and safety of anyone, including  
14 Plaintiffs.

15 159. Paragraph 159 of Plaintiffs' complaint contains no charging  
16 allegations against Defendants, and Defendants are therefore not required to admit  
17 or deny the allegations.

18 **Sixteenth Cause of Action**

19 *(Trespass)*

20 160. Paragraph 160 of Plaintiffs' complaint contains no charging  
21 allegations against Defendants, and Defendants are therefore not required to admit  
22 or deny the allegations.

23 161. Defendants lack sufficient information and belief to admit or deny the  
24 allegations in paragraph 161, and therefore deny the same.

25 162. Defendants lack sufficient information and belief to admit or deny the  
26 allegations in paragraph 162, and therefore deny the same.

27 163. Defendants lack sufficient information and belief to admit or deny the  
28

1 allegations in paragraph 163, and therefore deny the same.

2 164. Defendants lack sufficient information and belief to admit or deny the  
3 allegations in paragraph 164, and therefore deny the same.

4 165. Paragraph 160 of Plaintiffs' complaint contains no charging  
5 allegations against Defendants, and Defendants are therefore not required to admit  
6 or deny the allegations.

7 **Seventeenth Cause of Action**

8 *(Waste)*

9 166. Paragraph 166 of Plaintiffs' complaint contains no charging  
10 allegations against Defendants, and Defendants are therefore not required to admit  
11 or deny the allegations.

12 167. Defendants lack sufficient information and belief to admit or deny the  
13 allegations in paragraph 167, and therefore deny the same.

14 168. Defendants lack sufficient information and belief to admit or deny the  
15 allegations in paragraph 168, and therefore deny the same.

16 **Eighteenth Cause of Action**

17 *(Fraud/Constructive Fraud)*

18 169. Paragraph 169 of Plaintiffs' complaint contains no charging  
19 allegations against Defendants, and Defendants are therefore not required to admit  
20 or deny the allegations.

21 170. Defendants knew that they were obligated to comply with  
22 environmental laws and regulations, but lack sufficient information and belief to  
23 admit or deny the remaining allegations in paragraph 170, and therefore deny the  
24 same.

25 171. Defendants lack sufficient information and belief to admit or deny the  
26 allegations in paragraph 171, and therefore deny the same.

27 172. Defendants deny that Mark Eng was a lessee for the Property.  
28



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1 Defendants lack sufficient information and belief to admit or deny the remainder of  
2 the allegations in paragraph 172, and therefore deny the same.

3 173. Defendants deny that Technichem or Mark Eng made any false  
4 statements to Plaintiffs to induce Plaintiffs to continue contracting for the lease of  
5 the property. Defendants lack sufficient information and belief to admit or deny  
6 the remainder of the allegations in paragraph 173, and therefore deny the same.

7 174. Defendants deny that Technichem Inc. and Mark Ng knowingly and  
8 willfully made representations with no reasonable grounds for believing them to be  
9 true, and admit that since January 6, 2006, Defendants have ceased investigative  
10 work at the Property at the request of the plaintiff.

11 175. Defendants deny that they purposefully or negligently exacerbated the  
12 contamination at the Property or made false representations to Plaintiffs of any  
13 potential or actual contamination; Defendants lack sufficient information and belief  
14 to admit or deny the remaining allegations in paragraph 175, and therefore deny  
15 the same.

16 176. Defendants deny that they misrepresented or concealed anything from  
17 Plaintiffs regarding their practices for the disposal of hazardous substances;  
18 Defendants lack sufficient information and belief to admit or deny the remaining  
19 allegations in paragraph 176, and therefore deny the same.

20 177. Defendants deny that they operated a chemical recycling business  
21 knowing of the discharge of hazardous substances into the environment;  
22 Defendants lack sufficient information and belief to admit or deny the remaining  
23 allegations in paragraph 177, and therefore deny the same.

24 178. Defendants lack sufficient information and belief to admit or deny the  
25 allegations in paragraph 178, and therefore deny the same.

26 179. Defendants deny that they have engaged in any oppressive or  
27 malicious behavior and lack sufficient information and belief to admit or deny the  
28 remaining allegations in paragraph 179, and therefore deny the same.

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1 180. Defendants lack sufficient information and belief to admit or deny the  
2 allegations in paragraph 180, and therefore deny the same.

3 181. Defendants deny that Defendants acted in bad faith. Defendants lack  
4 sufficient information and belief to admit or deny the remainder of the allegations  
5 in paragraph 181, and therefore deny the same.

6 182. Defendants deny they breached a fiduciary duty to Plaintiffs by  
7 making false statements.

8 183. Defendants deny that Defendants concealed any information from  
9 Plaintiffs. Defendants lack sufficient information and belief to admit or deny the  
10 remainder of the allegations in paragraph 183, and therefore deny the same.

11 184. Paragraph 184 of Plaintiffs' complaint contains no charging  
12 allegations against Defendants, and Defendants are therefore not required to admit  
13 or deny the allegations.

14 **Nineteenth Cause of Action**

15 *(Business & Professions Code § 17200)*

16 185. Paragraph 185 of Plaintiffs' complaint contains no charging  
17 allegations against Defendants, and Defendants are therefore not required to admit  
18 or deny the allegations.

19 186. Paragraph 186 of Plaintiffs' complaint contains no charging  
20 allegations against Defendants, and Defendants are therefore not required to admit  
21 or deny the allegations.

22 187. Defendants deny that Defendants concealed any information from  
23 Plaintiffs. Defendants lack sufficient information and belief to admit or deny the  
24 remainder of the allegations in paragraph 187, and therefore deny the same.

25 188. Defendants deny that Mark Eng was a lessee for the Property and has  
26 any potential personal liability for violations of Health and Safety Code section  
27 25359.7(b). Defendants lack sufficient information and belief to admit or deny the  
28

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1 remainder of the allegations in paragraph 188, and therefore deny the same.

2 189. Defendants lack sufficient information and belief to admit or deny the  
3 allegations in paragraph 189, and therefore deny the same.

4 190. Paragraph 190 of Plaintiffs' complaint contains no charging  
5 allegations against Defendants, and Defendants are therefore not required to admit  
6 or deny the allegations.

7 191. Defendants lack sufficient information and belief to admit or deny the  
8 allegations in paragraph 191, and therefore deny the same.

9 192. Defendants lack sufficient information and belief to admit or deny the  
10 allegations in paragraph 192, and therefore deny the same.

11 193. Paragraph 193 of Plaintiffs' complaint contains no charging  
12 allegations against Defendants, and Defendants are therefore not required to admit  
13 or deny the allegations.

14 194. Paragraph 194 of Plaintiffs' complaint contains no charging  
15 allegations against Defendants, and Defendants are therefore not required to admit  
16 or deny the allegations.

17 **Twentieth Cause of Action**

18 *(Declaratory Relief Under State Law)*

19 195. Paragraph 195 of Plaintiffs' complaint contains no charging  
20 allegations against Defendants, and Defendants are therefore not required to admit  
21 or deny the allegations.

22 196. Defendants admit that an actual controversy apparently exists.

23 197. Defendants lack sufficient information and belief to admit or deny the  
24 allegations in paragraph 197, and therefore deny the same.

25 198. Defendants lack sufficient information and belief to admit or deny the  
26 allegations in paragraph 198, and therefore deny the same.

27 199. Paragraph 195 of Plaintiffs' complaint contains no charging  
28



1 allegations against Defendants, and Defendants are therefore not required to admit  
2 or deny the allegations.

3 **AFFIRMATIVE DEFENSES**

4 To further answer Plaintiffs' complaint, Defendants assert the following  
5 affirmative defenses:

6 **FIRST AFFIRMATIVE DEFENSE**

7 (Failure to State a Claim)

8 One or more of the claims asserted in Plaintiffs' complaint fail to state a  
9 claim against Defendants for which relief can be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 (Uncertainty)

12 The Plaintiffs' complaint, and each purported cause of action asserted  
13 therein, is uncertain.

14 **THIRD AFFIRMATIVE DEFENSE**

15 (Assumption of Risk)

16 Defendants are informed and believe and on such basis allege that Plaintiffs  
17 knowingly and voluntarily assumed the risk, if any, of the damages alleged in the  
18 complaint.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 (Intervening Acts)

21 Defendants alleges that they are not liable to Plaintiffs because of the  
22 subsequent and intervening acts of the Plaintiffs, other Defendants, other third  
23 parties and/or acts of God, all of which caused the damages, if any, alleged in the  
24 complaint.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 (Cause in Fact)

27 Defendants allege that Plaintiffs cannot prove any facts showing that the  
28 conduct of Defendants was the cause in fact of any threatened or actual releases of

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hazardous substances or hazardous wastes as alleged in the complaint.

**SIXTH AFFIRMATIVE DEFENSE**

(Proximate Cause/Substantial Factor)

Defendants allege that Plaintiffs cannot prove any facts showing that the conduct of Defendants was the proximate cause of, or a substantial factor in, any threatened or actual releases of hazardous substances or hazardous wastes as alleged in the complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

(Comparative Negligence Against Plaintiff)

Defendants allege that the negligence of Plaintiffs proximately caused and/or was a substantial factor in whatever injuries or damages are alleged by plaintiff in the Plaintiffs' complaint. By reason thereof, Plaintiffs' recovery, if any, must be diminished by the proportion of its own negligence.

**EIGHTH AFFIRMATIVE DEFENSE**

(Comparative Negligence of Third Persons)

Defendants allege that the negligence and/or intentional misconduct of third parties proximately caused and/or was a substantial factor in whatever injuries or damages are alleged by Plaintiffs in the complaint. By reason thereof, Plaintiffs' recovery, if any, must be diminished by the proportion of the negligence and/or intentional misconduct of the third parties.

**NINTH AFFIRMATIVE DEFENSE**

(Conformance With Statute, Regulations, and Industry Standards)

Defendants allege that to the extent Plaintiffs prove that Defendants conducted any of the activities alleged in the complaint, those activities conformed with and were pursuant to statutes, government regulations and industry standards based upon the state of knowledge existing at the time of the activities.

///

///

**TENTH AFFIRMATIVE DEFENSE**

(Estoppel)

By virtue of the acts, conduct and omissions of Plaintiffs, it is estopped from asserting the claims alleged in the complaint.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Waiver)

Defendants allege that as a result of the acts, conduct and omissions of Plaintiffs, it has waived its right to assert the purported causes of action in the complaint.

**TWELFTH AFFIRMATIVE DEFENSE**

(Mitigation of Damages)

Defendants allege that Plaintiffs have failed to take reasonable steps to mitigate any damages by failing to timely and economically investigate the existence and extent of the alleged contamination of the soil and groundwater beneath and adjacent to the site, and by failing to timely and economically remediate such contamination.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

Defendants allege that some of the causes of action in Plaintiffs' complaint asserted therein are barred by the applicable statutes of limitations.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Laches)

By virtue of Plaintiffs' unreasonable delay in commencing this action which delay has caused prejudice to Defendants, the doctrine of laches bars some of the purported causes of action asserted in the complaint.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(De Minimis Effect)

Defendants allege that if hazardous substances or hazardous wastes as

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1 alleged by Plaintiffs leaked or spilled from the site, such leak or spill was of such a  
2 minor, trivial or insignificant amount in view of the circumstances surrounding the  
3 alleged contamination of the soil and groundwater at the site that no reasonable  
4 person would conclude that Defendants created or caused the damages alleged in  
5 the complaint.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 (Defense Under Section 107(b) of CERCLA, Indispensable Parties)

8 Plaintiffs have failed to join all persons necessary for a full and just  
9 adjudication of the purported causes of action asserted in the complaint.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 (Defense Under Section 107(b) of CERCLA,

12 Based on the Actions or Omissions of a Third Party)

13 Defendants allege that the releases or threats of releases of hazardous  
14 substances and hazardous wastes, if any, alleged in Plaintiffs' complaint and the  
15 resulting damages there from, were solely caused by the acts or omissions of a  
16 third party or parties. Such third party or parties were neither an employee nor an  
17 agent of Defendants, nor did the acts or omissions of such third party or parties  
18 occur in connection with a contractual relationship, existing directly or indirectly,  
19 with any of the Defendants. If it is determined that there were releases of  
20 hazardous substances or hazardous wastes, then Defendants allege that they  
21 exercised due care with respect to the hazardous substances and hazardous wastes  
22 allegedly concerned, taking into consideration the characteristics of such hazardous  
23 substances and hazardous wastes in light of all relevant facts and circumstances  
24 and took precautions against foreseeable acts or omissions of any third party and  
25 the consequence that could foreseeably result from such acts or omissions.  
26 Therefore, Defendants are not liable for any resulting response costs or damages by  
27 reason of the provisions of the Comprehensive Environmental Response,  
28 Compensation, and Liability Act ("CERCLA") Section 107(b)(3), 42 U.S.C.

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§ 9607(b)(3).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Defense Under Section 107(b) of CERCLA, Based on an Act of God)

Defendants allege that some or all of the releases or threats of releases of hazardous substances or hazardous wastes, if any, alleged in Plaintiffs' complaint and the resulting damages there from, were solely caused by an Act of God, as defined by CERCLA Section 101(1), 42 U.S.C. § 9601(1). To the extent this caused releases or threatened releases of hazardous or hazardous wastes at or from the property, Defendants are not liable for any resulting response costs or damages by reason of the provisions of CERCLA Section 107(b)(1), 42 U.S.C.

§ 9607(b)(1).

**NINETEENTH AFFIRMATIVE DEFENSE**

(Defense Under Section 107(b)(4) of CERCLA,

Based on a Combination of an Act of God and the Actions of a Third Party)

19. Defendants allege that some or all of the releases or threats of release of hazardous substances or hazardous wastes, if any, alleged in Plaintiffs' complaint and the resulting damages there from, were caused by an act of God, as defined by CERCLA Section 101(1), 42 U.S.C. § 9601(1), in combination with the acts of a third party or parties. To the extent this caused releases or threatened releases of hazardous substances or hazardous wastes at or from the Property, Defendants are not liable for any resulting response costs or damages by reason of the provisions of CERCLA Section 107(b)(1), (3) and (4), 42 U.S.C. § 9607(b)(1), (3) and (4).

**TWENTIETH AFFIRMATIVE DEFENSE**

(Inconsistency with National Contingency Plan)

Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), authorizes recovery only for response costs incurred which are "necessary" and "consistent with the national contingency plan." A part or all of the response costs allegedly

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1 incurred and to be incurred by Plaintiffs is not necessary costs of response or are  
2 not consistent with the National Contingency Plan. As such, Plaintiffs are not  
3 entitled to recovery for such activities and costs.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 (No Release During Ownership)

6 The release or threatened release that caused Plaintiffs to incur response  
7 costs did not occur during any ownership or operation of the property by  
8 Defendants and therefore they cannot be liable under CERCLA.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 (No Joint and Several Liability)

11 Joint and several liability should not be imposed on Defendants because  
12 joint and several liability is not mandatory and it would be inequitable to impose  
13 joint and several liability on Defendants as an innocent party. Defendants are not  
14 jointly and severally liable for any damage alleged in Plaintiffs' complaint because  
15 there is a reasonable basis upon which to apportion any liability among the parties  
16 to the captioned action.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 (No Basis for Attorneys' Fees Under CERCLA)

19 Plaintiffs may not recover all or a portion of its claimed attorneys' fees  
20 under CERCLA.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 (Unclean Hands)

23 Plaintiffs' claims are barred by the doctrine of unclean hands.

24 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25 (No Contribution)

26 Plaintiffs cannot prove any facts showing that the conduct of Defendants  
27 contributed to the release of hazardous wastes or hazardous substances as alleged  
28 in the Plaintiffs' complaint.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

(Offset)

Plaintiffs' recovery, if any, against Defendants must be offset by any amount that Plaintiffs must pay as a responsible party.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

(Failure to give Proper Notice under RCRA)

Plaintiffs are barred from recovery on the RCRA claim for lack of notice.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Defendant exercised due care with respect to all matters alleged in the Plaintiffs' complaint.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred to the extent its costs, if any, were incurred as the result of its violation of regulatory standards or failure to cooperate with public officials.

**THIRTIETH AFFIRMATIVE DEFENSE**

The costs claimed by Plaintiffs do not constitute response costs within the meaning of CERCLA, 42 U.S.C. § 9607(a).

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

Plaintiffs are not entitled to a recovery of remedial costs from Defendants because Plaintiffs' alleged remedial actions were not and are not "cost-effective" pursuant to CERCLA, 42 U.S.C. § 9621.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Any release or threat of release of any hazardous substance, any imminent and substantial endangerment relating to any hazardous waste, and any other damage alleged in Plaintiffs' complaint were caused by the acts, omissions or fault of person or entities other than Defendants whose acts, omissions or fault are imputed to Plaintiffs by reason of the relationship of said persons or entities to

1 Plaintiffs.

2 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

3 Whatever damage, injury, loss, or expense may be, or may have been,  
 4 incurred by Plaintiffs under the circumstances and events alleged in Plaintiffs'  
 5 complaint was solely, directly, and proximately caused, or alternatively,  
 6 contributed to, by the misconduct, negligence, or wrongful conduct of by third  
 7 parties whose identities are not now known by Defendants. Therefore, Defendants  
 8 request that in the event Plaintiffs recover against Defendants whether by  
 9 settlement or judgment, an apportionment of fault be made by the Court or jury as  
 10 to all parties. Defendants further request a judgment and declaration of  
 11 indemnification and contribution against all those parties or persons in accordance  
 12 with the apportionment of fault.

13 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

14 Defendants assert all applicable defenses pled by any other defendant  
 15 or cross-defendant to this action, and hereby incorporate the same herein by  
 16 reference.

17 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

18 (Insignificant Contribution)

19 Defendants should not be liable for response costs because its disposal is  
 20 inconsequential to the costs of the clean up.

21 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

22 Defendants reserve the right to offer additional defenses which cannot now  
 23 be articulated due to Plaintiffs' failure to particularize its claims or to Defendants'  
 24 lack of knowledge of the circumstances surrounding Plaintiffs' claims. Upon  
 25 further particularization of the claims by Plaintiffs or upon discovery of further  
 26 information concerning Plaintiffs' claims, Defendants reserve the right to assert  
 27 additional defenses.  
 28

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**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

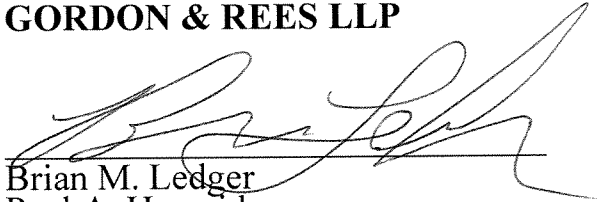
Plaintiffs' claims are barred by the principles of collateral estoppel and *res judicata*.

WHEREFORE Defendants pray as follows:

1. Defendants deny the relief sought by way of the prayer contained in Plaintiffs' complaint;
2. That Plaintiffs take nothing by its action;
3. That Plaintiffs' complaint be dismissed in its entirety;
4. That Defendants be awarded its costs, expert consultants and witness fees, and reasonable attorney's fees;
5. For a declaration declaring that Defendants are not liable to Plaintiffs in any amount; and
6. For such other relief as the Court deems just and proper.

Dated: June 25, 2007

**GORDON & REES LLP**

  
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Paul A. Henreid  
Attorneys for Defendants TECHNICHEM,  
INC., MARK J. NG, and STEPHEN S.  
TUNG

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Attorneys For: Defendants  
TECHNICHEM, INC., A CALIFORNIA CORPORATION; MARK J. NG, AN  
INDIVIDUAL; STEPHEN S. TUNG, AN INDIVIDUAL

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA PELLEGRINI, Trustee of the  
Mario J. and Virginia E. Pellegrini Trust,  
and VIRGINIA PELLEGRINI, an  
individual,

Plaintiff,

vs.

TECHNICHEM, INC., a California  
corporation, MARK J. NG, an  
individual; STEPHEN S. TUNG, an  
individual,

Defendants.

CASE NO.

**PROOF OF SERVICE**

Complaint filed: May 9, 2007  
Trial Date: \*\*

I, the undersigned, say: I am over 18 years of age, employed in the County  
of San Diego, California, in which the within-mentioned service occurred; and that  
I am not a party to the subject cause. My business address is 101 West Broadway,  
Suite 1600, San Diego, California 92101.

On June 25, 2007, I served the following document(s):

**ANSWER TO COMPLAINT**

by placing a copy thereof in a separate envelope for each addressee named  
hereafter and addressed as follows:

Anna L. Nguyen (SBN: 226829)  
Wactor & Wick LLP  
180 Grand Avenue, Suite 950  
Oakland, CA 94612-3572  
Ph: (510) 465-5750



1 Fax: (510) 465-5697

2  
3 **(X) BY MAIL.** I am familiar with this firm's practice of collection and  
4 processing correspondence for mailing with the United States Postal Service,  
5 and that the correspondence shall be deposited with the United States Postal  
6 Service this same day in the ordinary course of business pursuant to Code of  
7 Civil Procedure §1013a.

8 **( ) BY FAX.** In addition to service by mail as set forth above, a copy of said  
9 document(s) were also delivered by facsimile transmission to the addressee  
10 pursuant to Code of Civil Procedure §1013(e).

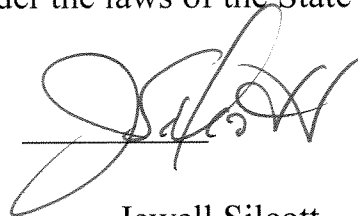
11 **( ) BY PERSONAL SERVICE.** I hand-delivered said document(s) to the  
12 addressee pursuant to Code of Civil Procedure §1011.

13 **( ) PERSONAL SERVICE BY CAUSE.** I caused said documents to be hand-  
14 delivered to the addressee on June 25, 2007, pursuant to Code of Civil  
15 Procedure §1011.

16 **( ) BY OVERNIGHT MAIL** I deposited said document(s) in a box or other  
17 facility regularly maintained by the express service carrier providing  
18 overnight delivery pursuant to Code of Civil Procedure §1013(c).

19 I declare under penalty of perjury under the laws of the State of California  
20 that the foregoing is true and correct.

21 Executed on June 25, 2007.



Jewell Silcott

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